

TOWN OF KITTERY, MAINE
BOARD OF APPEALS

APPROVED
October 14, 2014

Members present: Brett Costa, Craig Wilson, Gary Beers, Brian Boyle

Members absent: Niles Pinkham

Staff: Shelly Bishop, Interim Code Enforcement Officer

The meeting was called to order at 7:05 p.m.

1. Call to Order

2. Introduction

3. Pledge of Allegiance

4. Roll Call

5. Public Hearing

Second Christian Congregational Church, Map 4 Lot 57, 33 Government St, Mixed-Use
Kittery Foreside (MU-KF)

Second Christian Congregational Church requesting a Miscellaneous Variation request to the terms of Title 16, Section 3.2.15D, in order to demolish an existing garage and to construct a new garage.

Applicant requested postponement.

Mr. Costa: Applicants require 4 like votes for approval. Applicants may postpone their hearing when more members are present.

6. Public Hearing

Daniel Arbo, Map 3 Lot 106, 41 Oak Terrace, Residential-Suburban (R-S) & Shoreland Overlay
Daniel Arbo requesting Miscellaneous Variation Request to the terms of Title 16 Section 8.25.2, Title 16 Section 8.25.4.2A & Title 16, Section 8.25.5 in order to construct accessory apartment within reconstruction of existing dwelling, larger than 800 square feet.

Mr. Wilson: The Board has the authority under Title 16.1.5.2.F.4 to hear Miscellaneous Variation Requests.

Ms. Bishop: The applicant is requesting an ADU permit for an area exceeding 800 square feet, at approximately 1,000 sf. Additionally, ADU standards require occupancy in the primary structure of five years or more. Mr. Arbo's original structure was destroyed in a fire and re-built in 2013, however, would have met the minimum occupancy requirement had the fire not occurred. An ADU application is reviewed and approved by the CEO and the Town Planner. The Town Planner did not see the ADU application prior to scheduling of Mr. Arbo's Miscellaneous Variation Request. Upon review, it was found that the entire dwelling structure is in the shoreland overlay zone. The Interim Town Planner found that the proposed ADU could not be approved as the shoreland overlay standards cannot be met.

Mr. Beers: The Shoreland Overlay ordinance was enacted in 2011 after the ADU ordinance enactment of 2009.

Mr. Arbo: The original structure was built in 2006. He is not finishing the basement any larger than what he had before, but wants to add a stove and a door.

There was no public comment. The Interim CEO provided:

1. Applicant proposes to add an Accessory Dwelling Unit to the basement of the primary dwelling structure
2. The existing structure is a conforming structure in the Residential-Suburban and Shoreland Overlay Zone.
3. The previous structure was built in 2006 and destroyed by fire in 2013.
4. The ordinance requires occupancy in the primary structure for a minimum of five years. Had the structure not been destroyed by fire, this occupancy requirement would have been met.
5. Applicant is also proposing an ADU area of approximately 1,000 sf where 800 sf is the maximum allowed.

Mr. Boyle: Other than the extra square footage, are there other issues?

Mr. Wilson: The applicant can request a larger area through the Board of Appeals per Title 16.8.25.5. The limit in square footage in an ADU may be for those areas of higher density. In this case, it is a small increase in a less dense area.

Mr. Beers concurred and noted he reviewed Title 16.6.6.1 and Title 16.6.6.2 and found no issues. He added that a large portion of the space is not 'habitable'; the fact the structure burned to the ground should not be held against the applicant; the shoreland overlay was not considered a factor at the time the ADU ordinance was enacted, and should not be considered now. The factor is the base zone where this is a permitted use, and supports approval.

Mr. Wilson concurred with Mr. Beers' analysis, and urged approval.

Mr. Costa: This structure was re-built on the original structure's footprint.

Mr. Beers moved to grant a Miscellaneous Variation Request to Daniel Arbo to the terms of Title 16.8.25.2, Title 16.8.25.4.2.A and Title 16.8.25.5 for property located at 41 Oak Terrace in the Residential-Suburban and Shoreland Overlay Zones, Map 3 Lot 106, in order to construct an accessory dwelling unit larger than 800 square feet within the reconstructed existing dwelling.

Mr. Boyle seconded

Motion carried unanimously by all members present

Findings of Fact

1. Daniel Arbo requested a Miscellaneous Variation to Title 16.8.25.2, Title 16.8.25.4.2.A and Title 16.8.25.5 for property located at 41 Oak Terrace in the Residential-Suburban and Shoreland Overlay zones, Map 3 Lot 106, in order to construct an accessory dwelling unit larger than 800 square feet within the reconstructed existing dwelling.
2. The original structure was built in 2006, destroyed by fire in 2013, and reconstructed on the original footprint.
3. Had there been no fire, the ADU requirement of a minimum 5-year occupancy would have been met.
4. There was no public comment.
5. The Interim CEO stated this is a conforming lot with a conforming structure in the Residential Suburban and Shoreland Overlay zones.
6. ADU standards require units greater than 800 square feet must receive relief from the Board of Appeals.
7. The application satisfactorily meets Title 16.6.6.1 and Title 16.6.6.2, Basis for Decision.

Mr. Beers moved to accept the Findings of Fact as read.
Mr. Boyle seconded
Motion carried unanimously by all members present

Conclusion

The Board of Appeals has the authority under Title 16.8.25.5 to waive development standards.
Mr. Boyle moved to approved the Conclusion as read.
Mr. Beers seconded
Motion carried unanimously by all members present

Mr. Costa noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

8. Public Hearing

Linda Cheatham, Map 36 Lot 80, 144 Pepperrell Road, Residential-Kittery Point Village (R-KPV). Linda Cheatham requesting a Miscellaneous Variation Request to the terms of Title 16, Section 3.2.3D in order to demolish existing garage located 3' from side property line and reconstruct garage and breezeway 10' from side property line.

Mr. Beers: Questioned the Board's authority to hear this item per section 16.7.3.5.4
Nonconforming Structure Relocation: *A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone)...*

Though this is a well-designed project, the property and structures are entirely within the Shoreland Overlay Zone (250 feet of the river) and the Planning Board is the reviewing authority.

Mr. Costa: This applies to new construction.

Mr. Wilson: The previous Board of Appeals review authority of shoreland applications was given to the Planning Board as they had more resources available to them, including engagement of professionals for additional review if needed. Discussion followed regarding Board of Appeals authority regarding Shoreland Overlay Zone reviews, and ordinance interpretation.

Mr. Beers: The bracketed section (*in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone*) clearly applies to the Planning Board.

Mr. Costa: Disagreed with the interpretation that the Planning Board has authority.

Mr. Beers: The Planning Board does not review nonconformity, except within the Shoreland Overlay Zone, and agrees the ordinance is poorly written.

Mr. Beers moved to confirm the Board of Appeals per Title 16.7.3.5.4 does not have the power to hear this application. Per Title 16.7.3.5.4 the Board has found the structure in question lies within the Shoreland Overlay Zone, requiring Planning Board review.

Mr. Wilson seconded

Mr. Costa explained the Board's discussion to the applicant, and they agreed to take their application to the Planning Board for review.

Motion: 3 in favor; 1 opposed (Costa); 0 abstain

9. Acceptance of Previous Minutes - August 19, 2014
Review of minutes postponed.

10. Unfinished Business

11. New Business

Mr. Beers asked the following be included on the next BoA agenda:

- BoA representation to the Comprehensive Plan Update Committee
- Review of BoA By-Laws
- Consideration of an separate appeals title in the Town Code (distributed materials in this regard), to review items not currently under BoA review such as appealing decisions made by the Planning Board to the Board of Appeals rather than Superior Court.

Discussion followed regarding having regularly scheduled meetings whether there is an appeal or not in order to discuss the ordinance and other business the Board should discuss and consider, in addition to discussing prior appeals outside of the 45 day appeal period.

Mr. Beers discussed the various appeal processes available in Kittery.

12. Board Issues or Comment

A Board of Appeals workshop will be held on October 28, 2014.

The Interim CEO will advise the Board regarding scheduling new/pending applications before the Board.

13. Adjournment

Mr. Beers moved to adjourn

Mr. Wilson seconded

Motion carried unanimously by all members present

The Board of Appeals meeting of October 14, 2014 adjourned at 8:08 p.m.

Submitted by Jan Fisk, Recorder, October 20, 2014